

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

RUTH JAYNES,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:09-cv-407

COMMISSIONER OF  
SOCIAL SECURITY,

Defendant.

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**REPORT AND RECOMMENDATION**

This matter is before the Court on Plaintiff counsel's Motion for Award of Attorney Fee Pursuant to 42 U.S.C. § 406(b). (Dkt. ##14, 17). Plaintiff's counsel seeks \$9,000.00 in fees. Defendant has not opposed the motion. Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Plaintiff's motions be **granted**.

On October 2, 2009, the parties stipulated to remand this matter to the Commissioner for further administrative proceedings. (Dkt. #12-13). Plaintiff was subsequently awarded disability benefits, including past-due benefits in the amount of fifty-nine thousand two-hundred eighteen dollars and forty cents (\$59,218.40). (Dkt. #17, Exhibit B). Plaintiff agreed to pay counsel twenty-five percent of any past-due benefits awarded which in this instance equals fourteen-thousand, eight-hundred four dollars and sixty cents (\$14,804.60). (Dkt. #17, Exhibit D). Normally, the Social Security Administration withholds twenty-five percent of any past-due benefits payments to satisfy attorney fee requests such as this. In the present case, however, the Social Security Administration withheld from Plaintiff only seven hundred ninety-seven dollars and ten cents (\$797.10) from Plaintiff's past-due benefits award. (Dkt. #17, Exhibit C).

Counsel and Plaintiff have agreed to reduce counsel's fee in this matter to nine-thousand dollars (\$9,000.00). (Dkt. #17 at 2; Dkt. #17, Exhibit E). Counsel and Plaintiff have also agreed that if a fee in this amount is approved, Plaintiff will receive a credit towards this amount in the amount of six-thousand dollars (\$6,000.00), which represents the seven hundred ninety-seven dollars and ten cents (\$797.10) that was withheld from Plaintiff's past-due benefits award and five-thousand two-hundred two dollars and ninety cents (\$5,202.90) for services counsel performed before the administrative agency and for which counsel has already been paid. Thus, Plaintiff will pay counsel an additional three-thousand dollars (\$3,000.00). This would result in a total of three-thousand seven hundred ninety-seven dollars and ten cents (\$3,797.10) being "withheld" from her past due benefits award to pay counsel's fee.

The Social Security Act provides that "whenever a court renders a judgment favorable to a claimant...who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment." 42 U.S.C. § 406(b)(1)(A). The Court finds counsel's request reasonable, appropriate, and consistent with the agreement into which Plaintiff and counsel entered.

### **CONCLUSION**

For the reasons articulated herein, the undersigned recommends that Plaintiff counsel's Motion for Award of Attorney Fee Pursuant to 42 U.S.C. § 406(b), (dkt.##14, 17), be **granted** as detailed herein.

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file

objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Date: February 27, 2012

/s/ Ellen S. Carmody  
ELLEN S. CARMODY  
United States Magistrate Judge